

IN THE COURT OF ASSTT. SESSIONS JUDGE, BAKSA**Present: H.T Buragohain, Asstt. Sessions Judge, Baksa**29th day of April 2022

(Sessions Case No.16/22)

(Salbari P.S case no.14/20)

Complainant:

STATE OF ASSAM

Represented by

Mr. Dipmoni Boro, Ld. Addl P.P

Accused

1. Sri Bijit Daimary

REPRESENTED BY

Mr. Bolen Ch. Boro

Date of Offence	09-02-2020
Date of FIR	18-02-2020
Date of Charge-sheet	28-02-2020
Date of Framing Charges	17-03-2022
Date of commencement of evidence	29-04-2022
Date of which Judgment is reserved	29-04-2022
Date of Judgment	29-04-2022
Date of Sentencing Order, if any	-Nil-

Accused Details:

R a n k o f t h e a c c u s e d	Name of accused	Date of arrest	Date release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for purpose of sec. 428 Cr.P.C.
1	1. Sri Bijit Diamary	19-02-20	24-03-20	u/s 366(A)	Acquitted	-Nil-	35 days

J U D G M E N T

1. The gist of the prosecution case in brief is that one Khagen Ch. Goyari lodged an ejahar before O/C Salbari P.S on 18-02-2020 alleging interalia that on 19-02-2020 at about 2.00 a.m the accused Bijit Daimary induced his daughter Junu Goyari aged about 17 years to elope with him. It is further alleged that when the informant went to bring his daughter back, the accused misbehaved with him and drove him away. Hence, this case.

2. On receipt of the ejahar police registered a case as Salbari PS Case No.14/20, u/s 366 (A) IPC and started investigation. After completion of investigation the I/O submitted charge sheet against, u/s 366(A) IPC. Since the offence u/s 366(A) IPC is exclusively triable by the Court of Sessions, the Ld. JMFC, Baksa committed this case to the court of Hon'ble Sessions Judge, Baksa. On receipt of the committal paper and PRC Case Record, Sessions Judge, Baksa transferred this case to this court for disposal.

3. After hearing the learned counsels of both sides and on perusal of the case diary, charge was framed against the accused u/s 366(A) IPC. The charge so framed was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

4. During trial, prosecution side examined as many as 3(three) witness to prove the charge against the accused. Accused was examined u/s 313 CrPC. The statement of defence is recorded in a separate sheet. The defence case was of complete denial and the defence side has not adduced any defence evidence.

5. **POINT FOR DETERMINATION**

i) Whether the accused on 09-02-2020 at about 2.00 a.m at Madanguri under Salbari P.S, kidnapped the victim girl (name withheld) a minor girl under the age of 18 years with the intent that she may be forced or seduced to illicit intercourse and thereby committed an offence punishable u/s 366(A) IPC?

DISCUSSION DECISION AND REASONS THEREOF

6. I have heard learned counsel for both the parties and have gone through the evidence on record. Learned counsel for the prosecution has submitted that all the witnesses have supported the prosecution story and this is a fit case to convict the accused u/s 366(A) IPC.

7. On the other hand, learned defence counsel has submitted that prosecution has failed to prove the case. There are discrepancies in the evidence adduced before the court and the

statements of the witnesses recorded u/s 161 CrPC. Learned defence counsel has further submitted that the witnesses has nullified the prosecution case and from the evidence of PWs no ingredients of offence is made out against the accused.

8. It is at this stage expedient to cast a glance at the evidences of the prosecution witnesses.

9. Let us start our discussion with the evidence of PW1, Khagen Ch. Goyari who is the informant of this case. PW1 stated that about 2 years back one morning he woke up from sleep and found that his daughter was missing from his house. He searched for her everywhere but could find her. It appears that after few days PW1 lodged an ejahar. According to PW1 police recovered his daughter from the house of the accused after 15-20 days from the occurrence. It is further revealed from the evidence of PW1 that in the year 2021 his daughter got married to the accused and that at present she is residing with the accused. In his cross-examination PW1 stated that after knowing about the love affair between his daughter and the accused he gave his daughter in marriage to the accused. It is further revealed from the cross-examination of PW1 that a child is born from the wedlock.

10. Let us now go through the evidence of

PW2, Junu Goyari who is the victim of this case. PW2 stated in her evidence that her father lodged this case against the accused as she eloped with him in the year 2020. According to PW2 at present she is residing with the accused as his wife peacefully. Even PW3, Sarjon Daimary stated in his evidence that about 2 years back the accused made the victim elope with him. However, after few month the victim got married to the accused.

11. The victim in her statement u/s 164 CrPC also stated that she willfully eloped with the accused. From the evidence of the three PWs it can be assumed that the case has been lodged on misunderstanding. It also appears from the evidence and materials on record that the informant was aware about the love affair between the victim and the accused as it is revealed from the ejahar that the date of occurrence was on 09-02-2020 and the ejahar was lodged on 18-02-2020. Had the informant would be unaware about the eloping of his daughter with the accused he would have lodged the ejahar on the day of occurrence itself instead of waiting for more than a week. There being no proper supporting evidence as discussed above, the prosecution story cannot be relied upon as the same suffers from so many infirmities.

12. Therefore it is found and hold that the victim eloped with the accused on her on accord for

which she made no resistance. In view of the above discussion it is held that the prosecution has not been able to prove the charge against the accused Sri Bijit Daimary. Hence, it appears that the ingredients of Section 366(A) IPC is not attracted against the accused.

O R D E R

13. From the discussion made above, I find that the prosecution has miserably failed to prove the offence u/s 366(A) IPC against the accused.

Hence, accused Sri Bijit Daimary is found not guilty and is acquitted from the charge of offence u/s 366(A) IPC.

Bail bond furnished by the accused shall stand canceled after period of 6 months.

Given under my hand and seal of this court on this the 29th day of January 2022

Asstt. Sessions Judge,
Baksa, Mushalpur

Dictated & corrected by me

Asstt. Sessions Judge,
Baksa, Mushalpur

LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE
PW1	Sri Khagen Ch. Goyari	
PW2	Smti. Junu Goyari	
PW3	Sri Sarjon Daimary	

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
DW1		
DW2		

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
CW1		
CW2		
CW3		

LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1	Exhibit-P1/PW1	Eajhar
2	Exhibit-P1(1)/PW1	Signature of PW1
3	Exhibit-P2/PW2	Statement of the victim recorded u/s 164 CrPC
4	Exhibit-P2(1)/PW2 & Exhibit-P2(2)/PW2	Signatures of PW2

B. Defence:

Sr. No.	Exhibit Number	Description
1	Exhibit D-1/DW1	
2	Exhibit D-2/DW2	
3	Exhibit D-3/DW3	

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
1	Exhibit C-1/CW1	
2	Exhibit C-2/CW2	

D. Materials Objects:

Sr. No.	Exhibit Number	Description
1	MO1	
2	MO2	